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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LESTER J. KNISPEL, as Trustee, etc.,

Plaintiff and Appellant,

v.

TRANSNATION TITLE INSURANCE
COMPANY,

Defendant and Appellant.

B223870

(Los Angeles County
Super. Ct. No. BC393347)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Zaven V. Sinanian, Judge. Reversed with directions.

Garrett & Tully, P.C., Ryan C. Squire, and Michael K. Dewberry for
Defendant and Appellant.

Leodis C. Matthews, APC, Leodis C. Matthews, and Dick P. Sindicich for
Plaintiff and Appellant.

Transnation Title Insurance Company (Transnation) appeals from a judgment entered against it in an insurance bad faith action. We reverse with directions to enter judgment in favor of Transnation.

BACKGROUND

In 2004, Dale Wilson offered to buy from Menasha Log Co. LLC approximately 3,000 acres of land located in Curry County, Oregon, for a purchase price of \$3,000,000. The seller made a counteroffer to sell the property to Wilson for \$5,285,000, and Wilson accepted. The purchase agreement states the following: “Buyer acknowledges that Buyer has not received or relied upon any oral or written statements, made by Seller or any real estate licensee, which are not expressly contained in this Agreement.” Wilson assigned the contract to Golden Gate Trust (Golden Gate); Wilson’s daughter, Bridgette Wilson Sampras, was the beneficiary, and her business manager, Lester J. Knispel, was the trustee.¹

The offer and counteroffer described the land as “all property owned by Menasha Log Co. LLC. (Menasha) recorded on the following Curry County maps,” which were then listed by numbers that referred to tax assessor maps.² The record contains no evidence that any maps were attached to the agreement. It is undisputed that some of the property depicted on the listed maps was owned by Menasha and that some was not.

¹ We note that the record contains unsworn statements by Wilson that the Golden Gate Trust does not exist, that Golden Gate “is an L.L.C. with Trustee,” and that the deed and title policy should be corrected accordingly. The first amended complaint, however, refers to “Golden Gate Trust, dated December 19, 2001, d/b/a Golden Gate Properties, LLC, a California Limited Liability Company.” (Block capitals omitted.) The issue is of no consequence to our opinion. We shall refer to the buyer entity, whatever it may be, as “Golden Gate.”

² Wilson’s offer identified the seller as “Menasha Log Co. LLC,” and the property description attached to the offer also used that name. The counteroffer identified the seller as “Menasha Log Co. LLC or Menasha Forest Products Corp.” and used the same attached property description as Wilson’s offer. We will refer to the seller entity as “Menasha.”

Depicted on one of the listed maps was a 40-acre parcel of land that Menasha had previously owned but had sold to R. Scott Knox and Karen Knox in 2003 (“the Knox parcel”), before entering into the purchase agreement with Wilson. It is consequently undisputed that Menasha did not own the Knox parcel when Wilson and Menasha entered into the purchase agreement in 2004.

The title officer who prepared the preliminary title report for the Menasha-Wilson transaction, however, erroneously included the Knox parcel in the legal description of the property that Wilson was purchasing. The same erroneous legal description was used in both the warranty deed and the title insurance policy, which was issued by Transnation.

After escrow closed, when Wilson was developing the property, a surveyor he hired to assist with the development informed him that Menasha had previously transferred the Knox parcel to the Knoxes. On that basis, Golden Gate filed a claim under the title insurance policy in April 2006. Transnation accepted the claim under a reservation of rights.

In February 2007, Menasha filed a claim in arbitration against Golden Gate, seeking to have the deed to Golden Gate corrected to exclude the Knox parcel; the claim also sought resolution of another dispute that is not at issue in the present litigation. Golden Gate filed a counterclaim, alleging that the Knox parcel was part of the sale and seeking damages for Menasha’s failure to deliver title to that parcel. In November 2007, the arbitrator issued an award in favor of Menasha, directing that the deed be reformed accordingly.

In June 2008, Golden Gate filed suit against Transnation in Los Angeles County Superior Court. The operative first amended complaint alleged claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unfair competition, and declaratory relief. Golden Gate later chose to proceed on only the bad faith claim.

On July 22, 2009, the jury returned a special verdict in favor of Golden Gate on the bad faith claim, awarding \$120,000 in compensatory damages. Because the jury found that Transnation acted with malice, oppression, or fraud, the trial continued to a

punitive damages phase. On July 23, 2009, the jury awarded Golden Gate \$3,488,100 in punitive damages. On Golden Gate's motion, the court also awarded attorney fees of \$299,654.14 and prejudgment interest of \$40,427.22.

The court entered judgment on January 28, 2010. Transnation moved for judgment notwithstanding the verdict and for new trial. By order dated March 29, 2010, the court denied the motion for judgment notwithstanding the verdict but granted the new trial motion as to the punitive damages award, unless Golden Gate agreed to reduce the punitive damages award to \$240,000. It appears that Golden Gate did not agree to the reduction. Transnation appealed from the judgment and the orders on the posttrial motions. Golden Gate cross-appealed from the order conditionally granting a new trial as to punitive damages. Transnation then filed a "protective cross-appeal" as well, "out of an abundance of caution," while recognizing that "a cross-appeal is not necessary in view of [Transnation's] appeal from the judgment."

DISCUSSION

Transnation argues that because the Knox parcel was not included in the property to be sold under the Menasha-Wilson purchase agreement, Golden Gate never acquired an insurable interest in the Knox parcel and consequently never suffered an insured loss. We agree.

"If the insured has no insurable interest, the contract is void." (Ins. Code, § 280.) "Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest." (Ins. Code, § 281.) "A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable." (Ins. Code, § 283.) Thus, if Golden Gate never had an actual right, contractual or otherwise, to the Knox parcel, then Golden Gate never held an insurable

interest in that parcel, and the title insurance policy was void insofar as it purported to apply to that parcel.³

“We independently review the trial court’s interpretation of a contract, including the resolution of any ambiguity, unless the interpretation depends on the trial court’s resolution of factual questions concerning the credibility of extrinsic evidence.”

(*Dowling v. Farmers Ins. Exchange* (2012) 208 Cal.App.4th 685, 694.) Golden Gate does not contend that the Menasha-Wilson purchase agreement is ambiguous. *A fortiori*, Golden Gate does not rely on extrinsic evidence to show the existence of an ambiguity or the manner in which the ambiguity should be resolved. Accordingly, the interpretation of the purchase agreement is an issue subject to de novo review.

Under the purchase agreement, Wilson contracted to buy, and Menasha contracted to sell, all of the property that Menasha owned that was shown on certain maps. At the time of Wilson’s offer and Menasha’s counteroffer, Menasha did not own the Knox parcel. Menasha therefore did not contract to sell the Knox parcel to Wilson (and Wilson did not offer to buy it from Menasha). Golden Gate consequently never held an insurable interest in the Knox parcel, so the title insurance policy is void insofar as it purports to apply to that parcel.

Golden Gate presents no arguments to the contrary. Transnation’s opening brief on appeal argues that Golden Gate never held an insurable interest in the Knox parcel, but Golden Gate’s respondent’s brief never addresses the issue. Instead, Golden Gate argues that “it is undisputed that the Knox parcel was insured under the title policy” (apparently because the title policy included the title company’s erroneous legal description of the covered property), and Golden Gate cites evidence purporting to show Menasha’s “intent to convey the 40-acre Knox parcel” (for example, an agent of Menasha signed both the

³ Transnation contends that Oregon law does not differ from California law on this point, citing Or. Rev. Stat. section 742.011 and *Avrit v. Forest Industries Ins. Exch.* (Or. Ct. App. 1984) 696 P.2d 583, 585-586. Although Golden Gate’s briefs discuss choice of law, they do not address the issue of insurable interest. We agree with Transnation that Oregon law does not differ from California law on this point, so we need not decide which state’s law governs.

preliminary title report and the warranty deed on Menasha's behalf). (Bold and capitalization omitted.) Neither point is of any consequence. The purchase agreement is unambiguous, and Golden Gate does not contend otherwise. Under the agreement, Menasha contracted to sell to Wilson all of the property that Menasha owned that was depicted on the listed maps. Menasha did not then own the Knox parcel, so Menasha did not contract to sell it to Wilson. The title policy's legal description of the property does not render the purchase agreement ambiguous or alter its meaning, and neither does the cited evidence of Menasha's alleged intent to sell the Knox parcel to Wilson.

Because Golden Gate did not hold an insurable interest in the Knox parcel, the title policy was void as to that parcel. Transnation's failure to provide benefits on Golden Gate's claim as to that parcel therefore did not constitute a breach of the insurance contract. Golden Gate's bad faith claim—the only claim on which Golden Gate proceeded to trial—consequently fails as a matter of law. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 36.)

DISPOSITION

The judgment is reversed, and the superior court is directed to enter judgment in favor of Transnation. Transnation shall recover its costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.